

REMARKS

A. Status of Claims

Claims 1, 4-7, 9, and 17-22 are pending in the application. Claims 1, 4-7, 9, and 17-22 are rejected. Claims 1 and 17 have been amended to cancel limitations that are not needed to patentably distinguish over the art of record. Claim 9 has been amended to correct the dependency. New claims 23-27 have been added. No new matter has been added. A current listing of all pending claims may be found on the attached Appendix A commencing on page 9.

B. Rejection under 35 U.S.C. §103

The Examiner rejected claims 1, 4-7, 9, and 17-22 under 35 U.S.C. §103(a) as being unpatentable over Shepherd ("Shepherd"), U.S. Patent Number 195,850 in view of Rosberger ("Rosberger"), U.S. Patent Number 2,247,667.

1. Rejection of Claim 1.

In rejecting independent claim 1, the Examiner stated that Shepherd discloses a sleep surface comprising "a first section (A) having a longitudinal side including a first upper lip (E) and a first lower lip (G'), each of said first upper and lower lips having an inner surface and an outer surface, said upper and lower lips defining a receiving channel therethrough; a second section (C) having a longitudinal side including a second upper lip (upper rim) and a second lower lip (lower rim), each of said second upper and lower lips having an inner surface and an outer [sic], said second upper lip and said second lower lip received into said receiving channel, wherein the outer surface of said second upper lip abuts the inner surface of said first upper lip and the outer surface of said second lower lip abuts the inner surface of said first lower lip forming an overlap between the first section and the second section, wherein said longitudinal side of said second section is attached to the longitudinal side of the first section; and further wherein each section is constructed and arranged to maintain an air pressure therein that is independent of an air pressure in the other section; and further wherein said first and second bladders are capable of being folded into a sleeper sofa when not in use . . ."

The Examiner states that Shepard fails to teach certain claimed elements and attempts to supply the deficiencies of Shepard with Rosberger '667. According to the Examiner, as best seen in Figures 4, 6, and 7, Rosberger shows "a sectional mattress comprising upper and lower lips (formed by the combination of elements 15 and 16), the lips being formed by stitching along the borders of the mattress component where the material forming the sides, tops and bottoms of the components meet." In the Examiner's opinion, while Shepherd does not clearly show second upper and lower lips as claimed in independent claim 1, Rosberger allegedly teaches the same. Thus, according to the Examiner, it would have been obvious to one of ordinary skill in the art to provide the second section with upper and lower lips along the longitudinal edges as taught by Rosberger (the motivation being to seal the edges of the mattress).

Applicants traverse the rejection and respectfully request reconsideration. In particular, the hypothetical combination of Shepherd and Rosberger does not teach or suggest a sleep surface comprising "a first bladder having a longitudinal side including a first upper lip and a first lower lip . . . defining a receiving channel therethrough" and "a second bladder having a longitudinal side including a second upper lip and a second lower lip . . . said second upper lip and said second lower lip received into said receiving channel . . ."

Shepherd may be interpreted as including upper and lower lips on a first mattress section, but clearly does not teach, disclose or suggest providing a second mattress that also includes upper and lower lips. In fact, the second mattress section of Shepherd does not include any upper lip or lower lip on the longitudinal side. Thus, the receiving channel defined by the upper and lower lips of the first mattress section cannot "receive" the "upper" and "lower" flaps of the second mattress section.

While Rosberger does generally disclose upper and lower lips on adjoining sides of two mattress sections (each lip being formed by the combination of elements 15 and 16 as stated by the Examiner), neither set of upper and lower lips receives the other set of upper and lower lips as recited in claim 1. Instead, attached to each lip is a fabric strip extending along substantially the entire length of the lip. According to Rosberger, "[t]he free ends 17 of fabric strips 13 are provided, as shown in Fig. 3, with complementary halves of fastener units of adjacently disposed

strips 13 whereby, by aligning the sectional members in parallel spaced relation with the slide fastener halves in abutment, said sections may be secured together at their longitudinal edges.” Column 2, lines 13-20. Thus, the “lips” of Rosberger are secured using complementary slide fastener halves in an abutting relation but the lips do not receive corresponding upper and lower lips of an adjacent mattress section, forming an overlap between the two sections, as generally recited in independent claim 1.

For the foregoing reasons, the hypothetical combination of Shepherd and Rosberger fails to teach or suggest each element of independent claim 1, and the references do not render the claim obvious. Therefore, the rejection of independent claim 1 under 35 U.S.C. §103(a) should be withdrawn.

(a) Official Notice.

In rejecting claim 1, the Examiner once again took Official Notice of the functional equivalence of bladders and mattresses as sleep surfaces in the art of beds. In response, Applicants again traverse the Examiner’s assertion of Official Notice. It is Applicants’ position that bladders and mattresses are not functional equivalents because conventional mattresses of the type described in Shepherd and bladder-type mattresses of the type described by Applicants do not perform the same function. Unlike conventional mattresses which have a constant firmness, the firmness of a bladder is adjustable. Moreover, bladders do not compress over time and need replacement as mattresses do. Furthermore, unlike mattresses, bladders do not collect mold and dust mites. Thus, while both bladders and mattresses may be utilized as sleep surfaces, the underlying function of each is not equivalent. Therefore, Shepherd does not teach or suggest a “bladder” as claimed by Applicants.

In accordance with §2144.03 of the M.P.E.P., if an Applicant adequately traverses the Examiner’s assertion of Official Notice, the Examiner must provide documentary evidence in the next Office Action if the rejection is to be maintained. Furthermore, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, the Examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. Because the Examiner has not provided the required documentary evidence to properly

maintain the rejection, Applicants respectfully request that the Examiner's assertion of Official Notice be withdrawn.

In response to Applicants' challenge of the Official Notice taken in the Office Actions mailed December 15, 2005 and August 21, 2006, the Examiner stated that the subject matter of the Official Notice is now admitted prior art because Applicants failed to present a challenge in response to the former of the Office Actions. However, Applicants respectfully disagree. According to §2144.03 of the M.P.E.P., if Official Notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable. In particular, if such notice is taken, the basis for such reasoning must be explicitly set forth. However, in neither of the above Office Actions did the Examiner provide any such "technical line of reasoning" underlying her decision to take such notice. For that reason, it is Applicants' position that it was not proper to deem the subject matter of the Official Notice admitted prior art in the August 21 Office Action. Furthermore, because prosecution on the merits has not closed, it is Applicants' position that it was not improper to address the Official Notice in response to the August 21 Office Action.

2. Rejection of claims 4-7, 9, and 21.

Dependent claims 4-7, 9, and 21 were also rejected under 35 U.S.C. §103(a) as being unpatentable over Shepherd in view of Rosberger. Because claim 1 patentably distinguishes over the hypothetical combination of Shepherd and Rosberger to too do the claims depending therefrom.

3. Rejection of claim 17.

In rejecting independent claim 17, the Examiner was once again of the opinion that while Shepherd does not clearly show second upper and lower lips as claimed in independent claim 17, Rosberger expressly teaches the same, which are common in the art of mattresses. Thus, according to the Examiner, it would have been obvious to one of ordinary skill in the art to provide the second section with upper and lower lips along the longitudinal edges as taught by

Rosberger (the motivation being to seal the edges of the mattress). Applicant traverses the rejection and respectfully requests reconsideration.

For the reasons stated above, Rosberger does not teach or suggest such upper and lower lips as claimed in independent claim 17. As a result, the rejection of independent claim 17 under 35 U.S.C. §103(a) should be withdrawn.

In rejecting independent claim 17, the Examiner also stated that the method steps recited in the claim are “inherent to the use of the device shown by Shepherd ‘850.” Once again, Applicants respectfully disagree with the Examiner’s position. In particular, Shepherd does not teach or suggest a method of creating an uninterrupted sleeping surface with two bladders comprising “providing a first elongate bladder, having a first longitudinal upper lip and a first longitudinal lower lip . . . defining a receiving channel;” “providing a second elongate bladder, having a second longitudinal upper lip and a second longitudinal lower lip;” and “receiving the second longitudinal upper and lower lips into said receiving channel.” Similar to the reasons stated above in reference to independent claim 1, the combination of Shepherd and Rosberger fails to teach or suggest each element of independent claim 17. As a result, the reference does not render claim 17 obvious and the rejection of independent claim 17 under 35 U.S.C. §103(a) should be withdrawn.

(a) Official Notice

With regard to claim 17, the Examiner takes Official Notice of the fact that in view of the teaching of Shepherd for the desirability of making mattresses more convenient for packaging or handling, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method disclosed by Shepherd ‘850 such that it would further include the step of folding the first and second bladders into a sleeper sofa when not in use, the motivation being to facilitate the use and storage of the prior art device in a sleeper sofa. The second full paragraph of Shepherd states “[t]he object of this invention is to make a mattress so that it will be more convenient for packaging or handling than those made in the ordinary way.” Thus, the main benefit of the design disclosed in the Shepherd patent is the ability to disassemble the mattress for storage or packaging. According to the Examiner, this may include folding the

mattress sections of Shepherd in a sleeper sofa when not in use. However, unlike the mattress design in Shepherd, it is unnecessary to disassemble the sleep surface of the present application in order to fold the first and second bladders into a sleeper sofa when not in use. As a result, modifying the method disclosed by Shepherd in the manner suggested by the Examiner would not render claim 17 obvious. Moreover, Applicant has amended claim 17 to cancel the limitation to "folding said first and second bladders into a sleeper sofa when not in use" as it is not necessary to patentably distinguish over the art of record. Therefore, both the Examiner's statement of Official Notice and the rejection of independent claim 17 under 35 U.S.C. §103(a) should be withdrawn.

4. Claims 18-20 and 22.

Dependent claims 18-20 and 22 were also rejected under 35 U.S.C. §103(a) as being unpatentable over Shepherd in view of Rosberger. Claims 18-20 and 22 depend from independent claim 17. As such, these claims are allowable with their allowable independent base claim.

C. New Claims

With this Amendment, new claims 23-29 have been added. No new matter has been added. Dependent claims 23-27 recite patentable features not shown by the prior art of record, depend from allowable base claims, and should therefore be allowable.

D. Conclusion

Applicants respectfully submit that with the arguments presented herein all pending claims are allowable over the art of record, for at least the reasons discussed above, and respectfully request that a Notice of Allowance with respect to all pending claims be issued in this case.

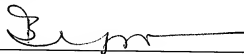
If the Examiner believes that a teleconference would be of further value in expediting the allowance of the pending claims, the undersigned can be reached at the telephone number listed below. The present response is being filed within the three-month statutory period for response (on or before March 6, 2007), and no fee or petition for an extension is due. If, however, it is believed that any additional fees are necessary, the Commissioner is hereby authorized to charge or credit any such fees or overpayment to Deposit Account No. 50-1901 (Reference #8929-3049/US).

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Respectfully submitted,

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